



**BEFORE THE  
STATE OF WISCONSIN  
Division Of Hearings And Appeals**

In the Matter of the 1978 Chevrolet, VIN  
1Z87L8S436869

Case Nos. 97-H-1013  
97-H-1023

**FINAL DECISION**

Allstate Indemnity Company applied to the Department of Transportation for a title and registration to the 1978 Chevrolet Corvette which is the subject of this hearing. By letter dated December 10, 1996, the Department refused to issue a title or registration to Allstate Indemnity Company for the subject vehicle. By letter dated January 6, 1997, Allstate Indemnity Company requested a hearing to review the Department's decision. (Docket No. 97-H-1013)

Bruce Bjorge also applied to the Department for a title and registration for the subject vehicle. By letter dated December 10, 1996, the Department refused to issue a title or registration to him. By letter dated February 19, 1997, Bruce Bjorge requested a hearing to review the Department's decision. (Docket No. 97-H-1023)

Pursuant to due notice a combined hearing was held on March 24, 1997, in Madison, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

Allstate Indemnity Company, by  
Attorney Ethan D. Lenz  
131 West Wilson Street, Suite 600  
Madison, WI 53703-3233

Bruce Bjorge  
103 Daugherty Court  
Ridgeway, WI 53582

Wisconsin Department of Transportation, by  
Attorney Charles M. Kernats  
Office of General Counsel  
PO Box 7910  
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision on April 3, 1997. No comments on the proposed decision were received. Except for the correction of typographical errors, the proposed decision is adopted as the final decision in this matter.

### Findings of Fact

The Administrator finds:

1. On June 3, 1996, Bruce Bjorge contracted to purchase a 1978 Chevrolet, VIN 1Z87L8S436869, from Capitol Corvette. Pursuant to the purchase contract, Mr. Bjorge paid \$8481.99 including tax, license and title fees for the Corvette. Bruce Bjorge took possession of the Corvette and retained possession of the vehicle as of the date of the hearing in this matter.
2. In June, 1996, Capitol Corvette was a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin, 53719. Capitol Corvette was in the business of selling used Corvettes. Capitol Corvette was a sole proprietorship and held motor vehicle dealer license number 1047. David C. Larson was the owner and sole proprietor of Capitol Corvette. On December 9, 1996, the Division of Hearings and Appeals issued an order revoking Capitol Corvette's motor vehicle dealer license (Docket Nos. 96-H-986 and 96-H-993).
3. The Division of Motor Vehicles of the Department of Transportation (DMV) is part of an agency of the State of Wisconsin and is authorized under sec. 218.01, Stats., to license, inspect, and regulate motor vehicle dealers in Wisconsin. DMV also has the authority under chapters 341 and 342, Stats., to issue titles and registration for motor vehicles in Wisconsin.
4. The 1978 Chevrolet Corvette purchased by Bruce Bjorge was owned by Cynthia M. Shaw. Ms. Shaw had entered into a consignment agreement with Capitol Corvette to sell the vehicle. Capitol Corvette failed to pay Ms. Shaw the purchase price for this vehicle, in violation of the terms of the consignment agreement.
5. Ms. Shaw filed a theft claim with her insurance company, Allstate Indemnity Company, for the value of the vehicle. Allstate Indemnity Company paid Ms. Shaw \$8,825.00 on her claim and Ms. Shaw transferred her interest in the vehicle to Allstate Indemnity Company.
6. Bruce H. Bjorge applied to the DMV for a Wisconsin title and registration for the subject vehicle. Allstate Indemnity Company by virtue of its agreement with Cynthia Shaw also asserts an ownership interest in the subject vehicle. Because of the conflicting ownership claims, the DMV refused to issue a title or registration to Bruce Bjorge or Allstate Indemnity Company for the subject vehicle.
7. When Bruce Bjorge purchased the subject vehicle from Capitol Corvette, he was not aware that it was owned by Cynthia Shaw, and that the Corvette was

sold on consignment by Capitol Corvette for Ms. Shaw. Bruce Bjorge purchased the Corvette at Capitol Corvette's business premises, and he believed that Capitol Corvette owned this vehicle and had the authority to sell it. Capitol Corvette did not inform Mr. Bjorge that the Corvette was owned by Ms. Shaw.

8. Bruce Bjorge has never worked for an automobile dealer or in the automotive industry. Prior to this transaction, Bruce Bjorge had never had any financial dealings with Capitol Corvette or David Larson.
9. Bruce Bjorge purchased the subject motor vehicle in good faith and without knowledge that the sale was in violation of the ownership rights of Cynthia Shaw. Bruce Bjorge is a buyer in the ordinary course of business of the subject motor vehicle

### Discussion

Bruce Bjorge and Allstate Indemnity Company have applied to the DMV for a certificate of title and registration for the subject motor vehicle. Pursuant to secs. 342.11(1) and 342.12(2), Stats., the DMV refused to issue a title or registration to Mr. Bjorge for the subject motor vehicle.<sup>1</sup>

The Wisconsin motor vehicle code is silent with respect to issuance of a title and registration in this situation. The transaction is regulated by the Uniform Commercial Code. Pursuant to the sec. 402.403(2), Stats., "[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business." In the instant matter, Cynthia Shaw entrusted the subject motor vehicle to Capitol Corvette for the purpose of selling

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<sup>1</sup> Sec. 342.11(1), Stats., provides in relevant part:

The department shall refuse issuance of a certificate of title...for any of the following reasons:

- (1) The department has reasonable grounds to believe that:
  - (a) The person alleged to be the owner of the vehicle is not the owner.
  - (b) The application contains a false or fraudulent statement.

Sec. 342.12(2), Stats., provides in relevant part:

- (2) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department, subject to sub. (3), shall either:
  - (a) Withhold issuance of a certificate of title until the applicant presents documents reasonable sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it; or
  - (b) Issue a distinctive certificate of title pursuant to sec. 342.10(4) or 342.283.

the vehicle. Accordingly, Capitol Corvette had the power to transfer ownership of the vehicle to a buyer.

Capitol Corvette has authority to transfer interest in the vehicle even if the consignor has retained title. In general, the interest of a consignor is not protected unless the consignor complies with one of the three alternatives set forth at sec. 402.326(3), Stats., relating to informing prospective creditors of the consignee of a potential security interest.<sup>2</sup> Allstate Indemnity Company has not alleged that Cynthia Shaw, its insured, complied with the provisions of sec. 402.326(3), Stats.

Bruce Bjorge purchased the vehicle from Capitol Corvette. He was unaware that Capitol Corvette was selling the vehicle on consignment. Even if Mr. Bjorge had been aware that the vehicle was being sold on consignment, there is no evidence that he should have suspected that Capitol Corvette did not intend to use the proceeds of this sale to pay the consignor or the sale was fraudulent in any manner.

Bruce Bjorge has the burden to prove that he is a buyer in the ordinary course of business. The phrase "buyer in the ordinary course of business" is defined at sec. 402.201(9), Stats. Sec. 401.201(9), Stats., provides in relevant part that: "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest of a 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . . . Based on the evidence in the record, Bruce Bjorge was a good faith purchaser who purchased the subject vehicle without knowledge that the sale was in violation of the ownership rights of Cynthia Shaw. Bruce Bjorge purchased the vehicle from Capitol Corvette, a licensed motor vehicle dealer, which at the time of the purchase was a company in the business of selling used motor vehicles.

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<sup>2</sup> Sec. 402.326(3), Stats., provides in relevant part:

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which the person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery:

- (a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or
- (b) Establishes that the person conducting the business is generally known by that person's creditors to be substantially engaged in selling the goods of others, or
- (c) Complies with the filing provisions of ch. 409.

Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. 402.403(2), Stats., Capitol Corvette had the power to transfer all of Cynthia Shaw's ownership rights in the subject motor vehicle to a buyer in the ordinary course of business.
2. Bruce Bjorge is a buyer in the ordinary course of business of the subject motor vehicle. Pursuant to sec. 402.403, Stats., Bruce Bjorge has acquired title and ownership of the subject motor vehicle.
3. Pursuant to secs. 346.26 and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

The Administrator orders:

The Division of Motor Vehicles of the Department of Transportation shall issue a motor vehicle title and registration to Bruce Bjorge for the 1978 Chevrolet Corvette, VIN 1Z87L8S436869, which is the subject of this matter.

Dated at Madison, Wisconsin on May 2, 1997.

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By: 

David H. Schwarz  
Administrator